

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 20, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 96-2319

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. JEFFREY W. WISEMAN,

PETITIONER-APPELLANT,

v.

GARY R. MCCAUGHTRY,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Dodge County:
THOMAS W. WELLS, Judge. *Affirmed.*

Before Eich, C.J., Vergeront and Deininger, JJ.

PER CURIAM. Jeffrey W. Wiseman, an inmate at Waupun Correctional Institution (WCI), appeals a circuit court order resolving Wiseman's certiorari action by affirming the findings of the hearing officer. The hearing

officer found Wiseman guilty of violating WIS. ADM. CODE § DOC 303.25,¹ relating to disrespect, and ordered Wiseman to serve two days adjustment segregation and sixty days program segregation. The warden upheld the hearing officer's decision and Wiseman sought certiorari review in the circuit court. The trial court upheld the hearing officer's decision. We affirm.

The hearing officer's disciplinary decision is reviewable by certiorari. *State ex rel. Meeks v. Gagnon*, 95 Wis.2d 115, 119, 289 N.W.2d 357, 361 (Ct. App.1980). This court's scope of review is identical to, and independent from, that of the circuit court. *State ex rel. Staples v. DHSS*, 136 Wis.2d 487, 493, 402 N.W.2d 369, 373 (Ct. App.1987). On certiorari, judicial review is limited to whether: (a) the hearing officer kept within the agency's jurisdiction; (b) the hearing officer acted according to law; (c) the hearing officer's decision was arbitrary, oppressive or unreasonable; and (d) the evidence was such that the hearing officer might reasonably make the determination the hearing officer did. *State ex rel. Jones v. Franklin*, 151 Wis.2d 419, 425, 444 N.W.2d 738, 741 (Ct. App.1989).

¹ WISCONSIN ADMINISTRATIVE CODE § DOC 303.25 provides:

DISRESPECT. Any inmate who overtly shows disrespect for any person performing his or her duty as an employe of the state of Wisconsin is guilty of an offense, whether or not the subject of the disrespect is present and even if the expression of disrespect is in writing. Disrespect includes, but is not limited to, derogatory or profane writing, remarks or gestures, name-calling, spitting, yelling, and other acts intended as public expressions of disrespect for authority and made to other inmates and staff. Disrespect does not include all oral or written criticism of staff members, criticism of them expressed through the mail, thoughts and attitudes critical of them, or activity in therapy groups.

We first address Wiseman's argument that the hearing officer's decision was arbitrary because the officer did not accept Wiseman's explanation that his statement was directed at another inmate, not a staff officer. The staff officer who issued the conduct report stated in the report:

On the above date and time I was doing showers in the SWCH. I observed inmate Wiseman #196040 standing and waiting for another inmate to finish showering so he could use that shower. Half of the showers on the other side of the bathhouse were open at that time. I approached Wiseman and told him that the showers on the other side worked also and he could use one of them. Wiseman loudly replied "You go get in one of them." This attracted the attention of several other inmates in the bathhouse. Wiseman then turned to the other inmates and stated "It's none of his fucking business."

Wiseman did not deny that he made the statement "you go get in one of them." Rather, he contended that the statement was directed at another inmate. He also contended that another inmate, not he, made the statement "it's none of his fucking business."

The hearing officer properly considered the statements of the staff officer in the conduct report. *See* WIS. ADM. CODE § DOC 303.86(2)(a). Nothing more than the conduct report is constitutionally required where the only issue presented at the hearing is an assessment of the relative credibility of the conduct report and the defendant's account of the incident. *See Walpole v. Hill*, 472 U.S. 445, 457 (1985). When the sufficiency of the evidence to support an administrative determination is challenged, this court does not weigh the evidence presented to the hearing officer. *Gordie Boucher Lincoln-Mercury Madison, Inc. v. City of Madison Plan Comm'n*, 178 Wis.2d 74, 84, 503 N.W.2d 265, 267 (Ct. App. 1993). Rather, we limit our inquiry to whether any reasonable view of the evidence supports the hearing officer's decision. *State ex rel. Jones*, 151

Wis.2d at 425, 444 N.W.2d at 741. Here, the hearing officer was faced with conflicting testimony and chose to believe the charging officer rather than Wiseman. We cannot disturb the hearing officer's credibility determination.

The record also supports the hearing officer's finding that Wiseman's conduct was disrespectful. WISCONSIN ADM. CODE § DOC 303.25 provides that "disrespect may include, but is not limited to, derogatory or profane writing, remarks or gestures, name-calling, spitting, yelling, and other acts intended as public expressions of disrespect for authority and made to other inmates and staff." A reasonable view of the evidence supports a finding that Wiseman's remark, "You go get in one of them," in response to the charging officer's comment, met this requirement. The conduct report states that the incident took place in the prison shower where other inmates were present and that Wiseman's remark attracted the attention of the other inmates who were in the shower. Wiseman has not met his burden of showing that the hearing officer's decision is not supported by any reasonable view of the evidence. We therefore reject Wiseman's argument that the evidence does not support a finding that his conduct was disrespectful.

We next consider Wiseman's argument² that he was denied due process because the security director did not sign the Notice of Major Disciplinary

² Wiseman also argues that the hearing officer's actions did not comply with guidelines (he did not explain what they are) and WIS. ADM. CODE § DOC 303 (this chapter provides all the disciplinary rules for inmates and sets forth the procedure for inmate discipline) and that he was arbitrarily and capriciously held in temporary lockup (TLU) in violation of prison rules. We note that Wiseman did not raise these issues at his administrative appeal. Therefore, we agree with the State that the issues are not properly before this court. See *Saenz v. Murphy*, 162 Wis.2d 54, 57, 469 N.W.2d 611, 612 (1991).

Hearing Rights and Waiver of Major Hearing and Waiver of Time form.³ We agree with the State that this issue was waived. A prisoner waives his due process rights by failing to object at the disciplinary hearing when those rights are denied. *Saenz v. Murphy*, 162 Wis.2d 54, 57, 469 N.W.2d 611, 612 (1991). Here, Wiseman did not raise this issue—that his due process rights were violated because the security director did not sign the form—at the disciplinary hearing nor did he raise it in the administrative appeal to the warden. We therefore conclude that Wiseman waived this argument.

Finally, Wiseman makes a sketchy argument that the warden had no authority to uphold or affirm the decision because he did not take an official oath. Wiseman did not raise this issue before the trial court. As a general rule, we do not consider issues not raised in the trial court. *County of Columbia v. Bylewski*, 94 Wis.2d 153, 171, 288 N.W.2d 129, 138 (1980). We decline to address this issue because Wiseman's argument is poorly developed and difficult to follow. This court will not address arguments which are unexplained and underdeveloped. *Herman v. Milw. Children's Hosp.*, 121 Wis.2d 531, 553, 361 N.W.2d 297, 306 (Ct. App. 1984).

³ Notice of Major Disciplinary Hearing Rights and Waiver of Major Hearing and Waiver of Time is a standardized administrative form which provides inmates with a list of their rights during a disciplinary hearing.

By the Court.—Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)(5),

STATS.

